

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

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DIANA SCHMAUDER, \*  
\*  
\* No. 19-186V  
\* Special Master Christian J. Moran  
Petitioner, \*  
\*  
v. \* Filed: April 16, 2021  
\*  
SECRETARY OF HEALTH \* Entitlement; On-Table injury.  
AND HUMAN SERVICES, \*  
\*  
Respondent. \*  
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Jeffrey S. Pop, Jeffrey S. Pop & Associates, Beverly Hills, CA, for Petitioner;  
Adriana R. Teitel, United States Department of Justice, Washington, DC, for Respondent.

### **UNPUBLISHED RULING FINDING ENTITLEMENT<sup>1</sup>**

On January 31, 2019, Diana Schmauder sought compensation for shoulder injury related to vaccine administration (“SIRVA”) following her Prevnar 13 vaccination on July 13, 2016. Ms. Schmauder seeks compensation pursuant to the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 through 34 (2012).

On January 28, 2021, a fact hearing was held to determine the onset of Ms. Schmauder’s injury. A ruling was then issued on February 1, 2021, finding that Ms. Schmauder’s shoulder pain began within 48 hours of her vaccination. Also, on February 1, 2021, the undersigned issued a tentative finding regarding the amount of damages for pain and suffering totaling \$72,500.

In an amended Rule 4(c) report filed on March 30, 2021, respondent stated that he will not continue to defend against Ms. Schmauder’s claim. Respondent stated that the Division of Vaccine Injury Compensation, Department of Health and Human Services, has reviewed the

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<sup>1</sup> The E-Government Act, 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services), requires that the Court post this ruling on its website. This posting will make the ruling available to anyone with the internet. Pursuant to Vaccine Rule 18(b), the parties have 14 days to file a motion proposing redaction of medical information or other information described in 42 U.S.C. § 300aa-12(d)(4). Any redactions ordered by the special master will appear in the document posted on the website.

facts of this case and have concluded that “[r]ecognizing that the Special Master’s factual finding, that the onset of petitioner’s shoulder pain occurred within forty-eight hours of her vaccination, is the law of the case, respondent advises that he will not defend the case on other grounds during further proceedings before the Office of Special Masters.” Resp’t’s Am. Rep., filed Mar. 30, 2021, at 2.

Special masters may determine whether a petitioner is entitled to compensation based upon the record. A hearing is not required. 42 U.S.C. § 300aa-13; Vaccine Rule 8(d). Based upon a review of the record as a whole, the undersigned finds that petitioner has established that she is entitled to compensation for her injury.

**Accordingly, Ms. Schmauder is entitled to compensation.**

Any questions may be directed to my law clerk, Haley Hawkins, at (202) 357-6360.

**IT IS SO ORDERED.**

s/Christian J. Moran  
Christian J. Moran  
Special Master